

ENTERED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

NOV - 6 2003

UNITED STATES OF AMERICA

TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

v.

Criminal Case Number: 2:02-00185

INDEPENDENCE COAL COMPANY, INC.

PROBATION MODIFICATION ORDER

At Charleston, on November 4, 2003, came the United States of America by Miller A. Bushong III, Assistant United States Attorney, and also came the defendant by Shane Harvey, Senior Corporate Counsel, and by its retained counsel, William J. Powell, Esquire, for the purpose of a preliminary hearing on a Petition for Warrant or Summons for Offender Under Supervision. Also present was John B. Edgar, Senior United States Probation Officer.

The court reviewed the history of this case, including the previous conditions of probation, and the recent site visit conducted by the court. The court then asked the parties to suggest additional conditions of probation designed to reduce the number of spills and to ensure quick reporting to authorities of those spills which do occur.

The United States and the defendant agreed that this hearing would constitute the final hearing on the Petition. The court anticipates that administrative proceedings will go forward as those officials of DEP and EPA deem appropriate in regard to the

spills of August 6, September 11-12, and October 19, 2003.

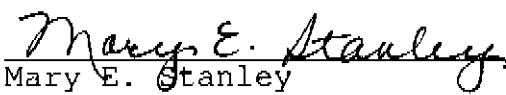
Following proffers of counsel and recommendations by the probation officer, the court determined that additional conditions of probation are necessary to ensure compliance with regulations.

Accordingly, it is hereby **ORDERED** that the defendant's current terms of probation shall continue in full force and effect and are **MODIFIED** to include the following additional conditions:

- 1) Independent environmental audit frequency shall be increased to every twelve (12) months, beginning with an audit report due March 31, 2004, and annually thereafter. The court may consider modification of this frequency following marked improvement.
- 2) A cash award, equivalent to one day's wages, shall be paid by the defendant to the employee of the defendant who first reports a spill directly to the West Virginia Spill Hotline. Independence Coal Company, Inc. shall publicize this incentive program in locations frequented by all employees.
- 3) The independent environmental auditor, in the March 31, 2004 report, shall consider whether to recommend to the court additional conditions of probation, such as an incentive program to promote compliance with environmental laws by offering a cash award to all employees of a unit/section, not just the supervisor, for a calendar quarter during which no significant environmental violations occurred in that unit/section.

The Clerk is directed to provide copies of this Order to the defendant, all counsel of record, the Probation Department, and the United States Marshal in this District.

ENTER: November 6, 2003.



Mary E. Stanley
United States Magistrate Judge